

United States Bankruptcy Court
District of Massachusetts

)	
)	
In re)	Chapter 7
)	Case No. 99-44611
RICHARD GEORGE BARRY,)	
)	
Debtor.)	
)	

ORDER DENYING MOTION TO FILE NOTICE OF CROSS APPEAL LATE

WHEREAS, on September 1, 2005, this Court issued a Memorandum of Decision and entered an Order granting in part the "Motion of Debtor for Discharge Injunction Sanctions against Rodney W. Brooks, Jr., Bernard Singleton and David A. Mech, Esq.;" and

WHEREAS, said Order assessed sanctions against David A. Mech, Esq. ("Attorney Mech") and denied the Debtor's request for a default order against the other respondents (on account of insufficiency of process); and

WHEREAS, Attorney Mech filed a timely notice of appeal on September 12, 2005, which appeal is now pending before the Bankruptcy Appellate Panel for the First Circuit (the "BAP"); and

WHEREAS, Federal Rule of Bankruptcy Procedure 8002(a) provides in relevant part:

If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 10 days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule,

whichever period last expires[.]
under which provision the deadline for the appellee to file any cross appeal was
September 22, 2005; and

WHEREAS, on October 3, 2005, the appellee's counsel filed the instant "Motion
to File Notice of Cross Appeal Late," pursuant to Rule 8002(c), and stating as reason
therefor "excusable neglect" on account of:

1. appellee's misreading of a notice issued by this Court advising him of a
thirty (30) day deadline within which to opt for review by the District Court
rather than the BAP; and
2. "astonishing pressure from present clients, as well as those who first
retained him up to two years ago on installment, for filing bankruptcy
petitions (sic) before the imminent 10/17/05 effective date of the severely
reforming (sic) laws."

This Court FINDS AND RULES that the reasons offered by appellee for his
failure to timely file a cross appeal do not constitute "excusable neglect" under Rule
8002(c), because:

1. it has been repeatedly held in this Circuit that, regardless of other factors
to be considered, there must still be a satisfactory explanation for a late
filing – and ignorance of an applicable rule does not satisfy the excusable
neglect standard, absent extraordinary circumstances, see Graphic
Comm'n Int'l Union, Local 12-N v. Quebecor Printing Providence, Inc.,
270 F.3d 1, 5-6 (1st Cir.2001); Hosp. del Maestro v. Nat'l Labor Relations
Bd., 263 F.3d 173, 174-75 (1st Cir. 2001); Mirpuri v. ACT Mfg., Inc., 212

F.3d 624, 627-631 (1st Cir. 2000); and

2. the press of other client business can not be characterized as
“extraordinary” circumstances where the volume of new business taken on
by appellee’s counsel was ultimately under his/her control.

For the reasons stated above, the appellee’s “Motion to File Notice of Cross
Appeal Late” is DENIED.

DATED: October 4, 2005

By the Court,

A handwritten signature in black ink, appearing to read "Henry J. Boroff", written over a horizontal line.

Henry J. Boroff
United States Bankruptcy Judge

cc: L. Jed Berliner, Esq.
David A. Mech, Esq.
Richard C. Donovan, Clerk, Bankruptcy Appellate Panel
United States Trustee